

STATE OF NEW HAMPSHIRE

DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER COUNCIL

RECEIVED

In Re: Appeal of Governor's Island Club

JAN 13 2004

Docket No. 03-20-WC

ANSWER OF GOVERNOR'S ISLAND CLUB, INC. TO OBJECTION
TO NOTICE OF APPEAL AND REQUEST FOR WAIVER OF RULES
AND IN THE ALTERNATIVE PETITION FOR INTERVENTION

NOW COMES Governor's Island Club, Inc., (hereinafter Governor's Island), a New Hampshire corporation with a mailing address of P.O. Box 7165, Gilford, New Hampshire, and in answer to the Objection of William Jacobson, et als, respectfully represents as follows:

1. Governor's Island admits that the Objectors except for Edward Rabbitt, are abutters to the subject parcel, but denies that there is any change to, or use of, the subject parcel, and also denies that all are directly affected by the use of subject parcel.
2. Governor's Island denies the allegations of paragraph 2 that said abutters filed objections with DES on September 10, and October 3, 2003 to Governor's Island's Request for a Variance as this is the first disclosure of such objections received by Governor's Island. Notices of such objections were not provided to Governor's Island, nor in any way referenced in the Denial of the Variance. Abutters' participation in the variance request whereby they "demonstrated therein their 'direct interest'", therefore comes as a complete surprise to Governor's Island.
3. Governor's Island admits the allegations of paragraph 3.

4. Governor's Island admits as stated in paragraph 4 that it intended that abutters should be notified of a hearing to reconsider the denial of the variance, fairness would so require, but as stated in paragraph 2 above, it did not serve copies of its Motion to Reconsider because it had no information that any abutters were involved in the variance request proceeding, not having received copies of their objections, and further their participation not being in anyway indicated in the copy of the decision denying the variance received by Governor's Island.
5. Governor's Island admits that not having received any acknowledgment from DES of the receipt of its Motion for Reconsideration filed on October 24, 2003, a telephone inquiry was made on December 11, 2003 to DES Staff Attorney Mark Harbaugh who advised that the Motion had recently reached his desk, and that no action had been taken on the motion. Appeal to the Water Council was filed December 17, 2003.
6. Governor's Island denies that its Notice of Appeal should be rejected as extremely late. Given the fact that no hearing was in fact scheduled, or held by DES, that a decision was apparently made based simply on an intra-agency administrative review of its petition, with no indication in the decision of the evidence considered, and the extent of the abutters' participation in the decision denying the variance, constitutes good cause. Env-WC 203.30. Basic fairness requires that the Council Rule 203.02 be waived. See Rule Env-C 206.05 (f) which refers to an original hearing, of which there was none in this matter.
7. As to paragraph 7, Governor's Island denies that its Motion For Reconsideration

was inadequate, and among much of the minutia advanced to support the argument of the inadequacy of the Motion to Reconsider is that it was not addressed to the proper office, and the exact name not given of the person moving for reconsideration. The fact of the matter is that the same subject matter, the same address shown on the DES decision were used, and the exact name of the applicant as on the variance request. One could argue that changing the name and address from that shown on DES's decision might cause confusion. In this day when the New Hampshire Supreme, Superior Courts, and Probate Courts are attempting to become user friendly, and even the Internal Revenue Service is attempting to shed some of its technical bureaucratic rules and regulations. One would suggest that a Motion to Reconsider addressed to Michael P. Nolin Commissioner, Department of Environmental Services Water Division at P.O. Box 95, Concord, New Hampshire 03302-0095 even absent the words "Enforcement Unit", with all important data on the face of the document should be deemed reasonably adequate.

If the exact name and address of the applicant was a cause of DES concern, one would expect DES to have contacted Governor's Island Club's attorney whose name, office address, and telephone number were stated on page 3 of the Motion to verify or obtain a more exact legal address. The absence of such a request would indicate DES had no problem that Env-C 206.05 was not complied with.

A fair reading of the Motion For Reconsideration in its entirety adequately sets

forth the requirements of Env-C 206.05 (b) (c) (d) and (e), and addresses the legal errors made by the Commissioner (paragraphs 2, 4, 6, and cases cited).

The Motion to Reconsider was filed in a timely manner, i.e. eight days after DES's decision. Env-C 206.03.

8. Governor's Island denies the allegation in paragraphs 8, 9, 10, 11, and 12, for the same basic reasons as are set forth in paragraphs 6 and 7 above. The same rationale applies to reject the reasons set forth by objectors to Governor's Island appeal. Incorporation of allegations and statements of legal error from one pleading to another is the same matter are commonplace in the courts of this and other states, and to suggest that the rules of the Water Council ignore such history and practice is indeed pushing the intent and application of administrative rules to an unreasonable and impracticable degree. How more clearly can it be stated that a decision is illegal and arbitrary than stating as was stated in paragraphs 2, 4, and 6 of the Motion for Reconsideration, which was incorporated in its appeal to this council? If Governor's Island is to be faulted in paragraph 11 for not sending a notice of appeal to abutters, why did Governor's Island not receive a notice of the abutters' objections to the variance request so that Governor's Island would have become aware of their involvement, and could have responded to their objections.
9. Governor's Island denies the allegations of paragraph 9. Paragraph A through E of its notice of appeal specify in detail the relief requested by Governor's Island. Governor's Island and the abutters should be on the same playing field, and the granting of an appeal would allow them as well as Governor's Island to present

their respective positions in the open.

Wherefore, Governor's Island respectfully objects to the Motion to Deny Waiver of Rules, by objectors, and Rejection of the Appeal.

Governor's Island does not object to objectors' intervention as obviously they have been involved in this matter without Governor's Island previous knowledge, and as stated in its Motion For Reconsideration to DES Governor's Island wanted the abutters brought in to this matter as a matter of basic fairness, which at this point the objectors do not feel Governor's Island is entitled to receive.

Dated: 11/13/04

Respectfully submitted
Governor's Island Club
By its attorneys
Brouillard & Brouillard P.L.L.C.

By: 

COPY
Philip A. Brouillard
16 Academy Street
Laconia, NH 03246
(603) 524-4450